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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)

Chapter 11

(Lead Case) (Jointly Administered)

**DEBTORS' MOTION PURSUANT TO
BANKRUPTCY CODE SECTIONS 105(a)
AND 107(b) AND BANKRUPTCY RULE
9018 FOR ENTRY OF AN ORDER
AUTHORIZING THE FILING UNDER
SEAL OF CERTAIN EXIT FINANCING
FEE LETTERS**

[No Hearing Requested]

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the
2 “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the
3 above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the
4 “**Motion to Seal**”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code (the
5 “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy**
6 **Rules**”), Rule 1001-2(a) of the Bankruptcy Local Rules for the United States District Court for the
7 Northern District of California (the “**Bankruptcy Local Rules**”) and the *New District Wide*
8 *Procedures for Electronically Filing Sealed and Redacted Documents* adopted by the United States
9 Bankruptcy Court for the Northern District of California (the “**Local Procedures**”), for entry of an
10 order authorizing the Debtors to file the Fee Letters (as defined below) under seal related to the
11 *Plan Proponents’ Joint Memorandum of Law and Omnibus Response in Support of Confirmation*
12 *of Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization* [Docket No.
13 7528] (the “**Memorandum**”)¹ and (ii) directing that Fee Letters shall remain under seal and
14 confidential and not be made available to anyone (except for the parties identified in the
15 immediately following sentence) without the consent of the Debtors and the Fee Letter Parties (as
16 defined below) or further order from the Court. The Debtors shall provide the Fee Letters to the
17 Court, the Office of the United States Trustee for the Northern District of California (the “**U.S.**
18 **Trustee**”) and to advisors to the Official Committee of Unsecured Creditors, the Official
19 Committee of Tort Claimants and any other official committee established pursuant to section 1102
20 of the Bankruptcy Code on a confidential and professionals’ eyes only basis.

21 In support of the Motion to Seal, the Debtors respectfully submit the Declaration of
22 Paul H. Zumbro (the “**Zumbro Declaration**”), filed contemporaneously herewith. A proposed
23 form of order granting the relief requested herein is submitted concurrently herewith in accordance
24 with the Local Procedures (the “**Proposed Order**”).

27 ¹ Capitalized terms used but not defined in this Motion to Seal shall have the meaning used in the
28 Memorandum.

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Bankruptcy Local Rule 5011-1(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

Contemporaneously herewith in a further supplement to the Plan Supplement, the Debtors have filed the following forms of commitment letters (the “**Commitment Letters**”) with the Court:

- that certain form of RCF Commitment Letter (the “**HoldCo RCF Commitment Letter**”), by and among PG&E Corp., JPMorgan Chase Bank, N.A. (“**JPMorgan**”), Bank of America, N.A. (“**BANA**”), BofA Securities, Inc. (“**BofA**” and, together with BANA, “**Bank of America**”), Barclays Bank PLC (“**Barclays**”), Citigroup Global Markets Inc. (“**Citi**”), Goldman Sachs Bank USA (“**GS Bank**”), BNP Paribas (“**BNP**”), Credit Suisse AG, Cayman Islands Branch, Mizuho Bank, Ltd. (“**Mizuho**”), MUFG Union Bank, N.A. (“**MUFG**”), Wells Fargo Bank, National Association (“**Wells Fargo**”), Bank of Montreal, Chicago Branch (“**Bank of Montreal**”) and The Bank of New York Mellon (“**BNY Mellon**”);
- that certain form of RCF Commitment Letter (the “**Utility RCF Commitment Letter**”), by and among the Utility, JPMorgan, Bank of America, Barclays, Citi, GS Bank, BNP, Credit Suisse AG, New York Branch, Mizuho, MUFG, Wells Fargo, Bank of Montreal and BNY Mellon; and
- that certain form of Term Loan Facility Commitment Letter (the “**Term Loan Facility Commitment Letter**”), by and among the Utility and JPMorgan, Bank of America, Barclays, Citi, GS Bank, BNP, Credit Suisse AG, New York

1 Branch, Mizuho, MUFG, Wells Fargo, Bank of Montreal, BNY Mellon and
2 Bank of China, Los Angeles Branch.

3 As described in the Disclosure Statement, in order to finance the transactions
4 contemplated by the Plan, the Debtors expect to incur the Exit Financing. The Commitment Letters
5 allow the Debtors to secure lender commitments for the HoldCo Exit Revolver Facility, the Utility
6 Exit Revolver Facility and the Utility Exit Term Facility (each as defined in the Plan Supplement),
7 which are essential components of the Exit Financing. As compensation for arranging, structuring
8 and acting as agent with respect to these financing arrangements, Debtors have or will enter into
9 the following fee letters (the “**Fee Letters**”):

- 10 • that certain form of Bank Facilities Fee Letter (the “**Bank Facilities Fee**
11 **Letter**”), by and among the Debtors, JPMorgan, Bank of America, Barclays,
12 Citi, GS Bank, BNP, Credit Suisse AG, Cayman Islands Branch, Credit Suisse
13 AG, New York Branch, Mizuho, MUFG, Wells Fargo, Bank of Montreal, BNY
14 Mellon and Bank of China, Los Angeles Branch;
- 15 • that certain Administrative Agent Fee Letter dated May 4, 2020 (the
16 “**Administrative Agent Fee Letter**”), between the Debtors and JPMorgan; and
- 17 • that certain Structuring Letter dated May 4, 2020 (the “**Structuring Fee**
18 **Letter**”), between the Debtors and J.P. Morgan Securities LLC (the non-Debtor
19 parties to the Fee Letters, the “**Fee Letter Parties**”).

20 Because the Fee Letters include sensitive and confidential commercial information, the
21 Debtors and the Fee Letter Parties agreed that the Fee Letters would not be publicly disclosed. The
22 Fee Letter Parties have, however, consented to the Debtors filing the Fee Letters under seal with the
23 Court and providing the Fee Letters to the U.S. Trustee and advisors to the Official Committee of
24 Unsecured Creditors, the Official Committee of Tort Claimants and any other official committee
25 established pursuant to section 1102 of the Bankruptcy Code on a confidential and professionals’ eyes
26 only basis.

1 **III. BASIS FOR RELIEF REQUESTED**

2 Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order . . . that
3 is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b)
4 further provides:

5 On request of a party in interest, the bankruptcy court *shall*, and on the
6 bankruptcy court’s own motion, the bankruptcy court may—

7 (1) protect an entity with respect to a trade
8 secret or *confidential* research, development,
9 or *commercial information*
10

11 11 U.S.C. § 107(b) (emphasis added). Parsing the language of 107(b), courts have emphasized that
12 once the court determines that the information falls within one of the enumerated 107(b) categories,
13 the court “is *required* to protect [the movant] and has no discretion to deny the application”. *In re*
14 *Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). In addition, section 107(b) expressly authorizes
15 the court to grant protection, where warranted, to the confidential commercial information of “an
16 entity”. 11 U.S.C. § 107(b). Unlike its counterpart Rule 26(c) of the Federal Rules of Civil Procedure,
17 section 107(b) of the Bankruptcy Code does not require the movant to demonstrate “good cause”.
18 *Orion Pictures Corp.*, 21 F.3d at 28. Indeed, under section 107(b) the movant need only show “that
19 the information it [seeks] to seal [is] ‘confidential’ and ‘commercial’ in nature”. *Id.* at 27. Commercial
20 information is broadly defined to include information that would produce “an unfair advantage to
21 competitors by providing them information as to the commercial operations” of the entity seeking
22 protection, *see In re Itel Corp.*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982), or information that could
23 have a “chilling effect on [business] negotiations, ultimately affecting the viability of Debtors”, *see In*
24 *re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (quoting *In re Lomas Fin. Corp.*, No.
25 90 Civ. 7827 (LLS), 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991)). Significantly, commercial
26 information need not rise to the level of a trade secret to warrant section 107(b)’s protection. *See*
27 *Orion Pictures Corp.*, 21 F.3d at 28 (finding that “§ 107(b) is carefully drafted to avoid merging ‘trade
28 secrets’ with ‘confidential commercial information’”).

1 The Bankruptcy Rules similarly authorize the Court to “make any order which justice
2 requires (1) to protect the estate or any entity in respect of a trade secret or other *confidential* research,
3 development, or *commercial information*.” Fed. R. Bankr. P. 9018 (emphasis added), *see also In re*
4 *Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (“[T]he whole point of [Bankruptcy
5 Rule 9018] is to protect business entities from disclosure of information that could reasonably be
6 expected to cause the entity commercial injury”). Finally, Local Procedures require that a request for
7 seal is narrowly tailored to sealable materials. *New District Wide Procedures For Electronically*
8 *Filing Sealed and Redacted Documents*. The Debtors have narrowly tailored the sealing request herein
9 to the Fee Letters themselves. Because the Fee Letters contain confidential commercial information
10 within the scope of section 107(b), this Court should grant the Debtors’ request.

11 The Fee Letters are the product of arm’s length, extensive and good faith negotiations,
12 and due to the commercially sensitive nature of the pricing and economic terms included in each, the
13 public disclosure of the Fee Letters would likely cause substantial harm to the Debtors and the Fee
14 Letter Parties and create an unfair advantage for competitors. Accordingly, the Debtors agreed to keep
15 the Fee Letters confidential. In the competitive lending and investment banking industry, the
16 disclosure of this information would put the Fee Letter Parties at a distinct competitive disadvantage
17 by constraining their ability to negotiate fees and related provisions in future transactions. Further,
18 because exit financings are only a small fraction of all syndicated financings arranged by the Fee Letter
19 Parties, requiring them to disclose certain fee information in this context but not in others could have
20 a “chilling effect” that discourages them and other competitor institutions from providing exit
21 financing on terms favorable to debtors in chapter 11 cases. Finally, broad disclosure of the agreed
22 upon and other sealed provisions could jeopardize the Reorganized Debtors’ ability to secure lender
23 commitments for future financings, which would be adverse to the Reorganized Debtors and their
24 stakeholders.

25 It is a widespread practice for courts to authorize the filing of similar confidential
26 financing information under seal. *See, e.g., In re Hexion Holdings LLC*, No. 19-10684 (KG), at 2
27 (Bankr. D. Del. June 7, 2019) (ECF No. 553) (“The Debtors are authorized to file the Fee Letters and
28 the Notes Engagement Letter under seal and to redact information concerning the fees payable in the

1 form of Notes Engagement Letter annexed to the Motion.”); *In re Avaya Inc.*, No. 17-10089 (SMB),
2 at 2 (Bankr. S.D.N.Y. Oct. 25, 2017) (ECF No. 1388) (“The Debtors are authorized to file the Exit Fee
3 Letter under seal”); *In re Optima Specialty Steel, Inc.*, No. 16-12789 (KJC), at 4 (Bankr. D. Del.
4 June 29, 2017) (ECF No. 899) (“The Debtors are authorized to file the Fee Letter under seal”); *In*
5 *re Ultra Petroleum Corp.*, No. 16-32202 (MI), at 1 (Bankr. S.D. Tex. Feb. 13, 2017) (ECF No. 1125)
6 (“The Debtors are authorized to file in redacted form or under seal the Exit Financing Agreements
7 [including Fee Letters and the Engagement Letter] and Exit Financing Motion.”); *In re Homer City*
8 *Generation, L.P.*, No. 17-10086 (MFW), at 2 (Bankr. D. Del. Jan. 18, 2017) (ECF No. 84) (“The
9 Debtor is authorized to file the Documents [including the Engagement Letter] under seal.”); *In re*
10 *Rotech Healthcare Inc.*, No. 13-10741 (PJW), at 4 (Bankr. D. Del. July 29, 2013) (ECF No. 762)
11 (“[T]he Debtors are authorized to file the First Lien Credit Facilities Fee Letter under seal”); *In*
12 *re Smurfit-Stone Container Corp.*, No. 09-10235 (BLS), at 3 (Bankr. D. Del. Feb. 16, 2010) (ECF No.
13 5056) (“[T]he Debtors are authorized to file the Fee Letters under seal”); *In re Tribune Co.*, No.
14 08-13141 (KJC), at 2 (Bankr. D. Del. Dec. 10, 2008) (ECF No. 62) (“Movants are authorized to file
15 the Fee Letters under seal”); and *In re Adelphia Communications Corp.*, No. 02-41729 (REG), at
16 2 (Bankr. S.D.N.Y. Mar. 24, 2004) (ECF No. 4260) (“[T]he Confidential Materials [including the
17 Engagement Letter and Fee Letter] . . . shall remain confidential, [and] be filed under seal”).

18 The Debtors and the Fee Letter Parties fully acknowledge the paramount importance
19 of the policy of open access to courts underlying section 107(a)—“[e]xcept as provided in subsections
20 (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a
21 bankruptcy court are public records open to examination by an entity at reasonable times without
22 charge.” 11 U.S.C. § 107(a). In this spirit, the Debtors have narrowly tailored their request to filing
23 the Fee Letters with the Court under seal according to the Local Procedures, and propose to share
24 copies of the Fee Letters with the U.S. Trustee and advisors to the Official Committee of Unsecured
25 Creditors, the Official Committee of Tort Claimants and any other official committee established
26 pursuant to section 1102 of the Bankruptcy Code on a confidential and professionals’ eyes only basis.
27 The relief sought herein is consistent with similar relief sought in respect of other financing fee letters
28

1 in these Chapter 11 Cases. The Court granted such earlier relief and the Debtors respectfully request
2 the Court similarly grant the relief sought herein.

3 **IV. NOTICE**

4 Notice of this Motion to Seal will be provided to (i) the Office of the United States
5 Trustee for Region 17 (Attn: Andrew Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the
6 Official Committee of Unsecured Creditors; (iii) counsel to the Official Committee of Tort Claimants;
7 (iv) the Securities and Exchange Commission; (v) the Internal Revenue Service; (vi) the Office of the
8 California Attorney General; (vii) the California Public Utilities Commission; (viii) the Nuclear
9 Regulatory Commission; (ix) the Federal Energy Regulatory Commission; (x) the Office of the United
10 States Attorney for the Northern District of California; (xi) counsel for the agent under the Debtors'
11 debtor-in-possession financing facilities; (xii) counsel for the Fee Letter Parties; and (xiii) those
12 persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to
13 Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no
14 further notice is required.

15 No previous request for the relief sought herein has been made by the Debtors.

16 WHEREFORE the Debtors respectfully request entry of an order granting the relief
17 requested herein and such other and further relief as the Court may deem just and appropriate.

18
19 Dated: May 24, 2020

20 **WEIL, GOTSHAL & MANGES LLP**
21 **CRAVATH, SWAINE & MOORE LLP**
22 **KELLER BENVENUTTI KIM LLP**

23 /s/ Paul H. Zumbro

24 Paul H. Zumbro

25 *Attorneys for Debtors and Debtors in Possession*
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